Office-Supreme Court, U.S.
FILED
MAR 31 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 937

In the Matter of

ARTHUR BENNETT, an Attorney,

Petitioner

—against—

CO-ORDINATING COMMITTEE ON DISCIPLINE,

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

PETITIONER'S REPLY BRIEF

LEONARD FELDMAN
Attorney for Petitioner

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 937

In the Matter of

ARTHUR BENNETT, an Attorney,

Petitioner

—against—

CO-ORDINATING COMMITTEE ON DISCIPLINE,

Respondent

PETITIONER'S REPLY BRIEF

Respondents' answering brief makes it manifest that the constitutional issue here is clear and compelling.

The basic issue is can a trial be deemed valid if there is evidence that during the trial a fundamental and basic violation of due process occurred?

It need not be extensively argued that to give the meaningless, but to secret and withhold the substantial, is to give nothing.

This Court has spoken on the requirement that due process be observed in the proceedings relating to admission to the Bar. It is respectfully submitted that this Court should now speak on the requirement that due process must be observed in proceedings designed to disbar attorneys.[1]

[1] In the five counties which comprise New York City and in Nassau County, which adjoins the city, there are three permanent inquiries with permanent staffs engaged in continued investigations and disciplinary prosecutions of attorneys.

Respondents' brief attempts to becloud the real issue. The plain unadulterated facts are these:

(1) Kaston did not implicate the petitioner until *after* he had entered into an arrangement with respondents' trial counsel (the then assistant district attorney) which arrangement included respondents' trial counsel's consent to a lesser plea for Kaston.

(2) *Blum's* implication of the petitioner did not come until *after* there had been a discussion between Blum and respondents' trial counsel regarding the calling of Blum's mother as a witness for respondents. Blum's mother was not called. The change in testimony did not relate to some innocuous matter. It related to the specific charge in issue—the circumstances under which and the responsibility for the creation of a certain false letter.

(3) In *Denbaum* respondent's brief finds justification for their trial counsel's conduct in the fact that their trial counsel's failures to reveal that Denbaum did not implicate the petitioner until *after* he had made a deal in which he traded an accusation of petitioner for freedom from prosecution for himself, did not result in a conviction of the petitioner. The essence of respondents' argument is that a denial of due process is of no consequence unless it results in harm. Respondents' concept of civil rights is unique.

(4) In *Benjamin*, respondents' brief blandly concedes that Benjamin testified falsely in the presence of respondents' trial counsel and also concedes that respondents' trial counsel silently sat by, knowing that testimony to be false. The transaction involved in the false testimony was again a *deal*, a deal to inculpate the petitioner.

The "fairness" which respondents' brief claims to have afforded petitioner would, in the case at bar, be ludicrous if it were not so tragic. Petitioner's disbarment was obtained by appealing to the self-interest of accusing witnesses who were pointedly assured that respondents' interest was the petitioner and not them. When in instance after instance it is shown that witnesses did not make any accusation until they were led to believe that an accusation would result in immunity for the , then to speak of "fairness" is to indulge in fantasy. When in instance after instance it is shown that the prosecuting attorney has knowingly permitted principal witnesses to lie on the stand then "fairness" can't even be discussed.

The respondents' discusion of the "law" is as irrelevant to the issue before this Court as is the respondents' discussion of "fairness". To argue, as do respondents, that the standards of due process are less applicable to a non-jury trial than to a jury trial is to ignore the history written in the opinions of this Court. A violation of due process occurs when judges, not juries, err.

To say that respondents' trial counsel "voluntarily" disclosed the evidence of Kaston's, Benjamin's, Blum's and Denbaum's falsity is to engage in pure dissembly. Respondents' trial counsel made no such disclosure during the trial. He made his disclosure only after he was called to the stand, long after the trial, and cross-examined to establish that in fact a withholding had occurred.

A withholding of evidence occurred. It is respectfully submitted that such a withholding taints a trial and renders it void for such a withholding is inconsistent with the very concept of due process.

Respectfully submitted,

LEONARD FELDMAN
Attorney for Petitioner